

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE PAYMENT CARD
INTERCHANGE FEE AND MERCHANT
DISCOUNT ANTITRUST LITIGATION

Case No. 14-MD-01720-JG-JO

This Document Relates To:

*Visa U.S.A. Inc., et al. v. The Home Depot,
Inc., et al., No. 14-CV-0261 (JG) (JO).*

STIPULATION AND PROPOSED ORDER

WHEREAS, a collection of class action and individual lawsuits was consolidated by the Judicial Panel on Multidistrict Litigation before Judge Gleeson in the United States District Court for the Eastern District of New York (the “Court”) and titled *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, 05-md-1720 (E.D.N.Y.) (JG) (JO) (the “*Interchange Fee Litigation*”);

WHEREAS, on November 27, 2012, the Court preliminarily approved a settlement of the proposed class actions in the *Interchange Fee Litigation*, and provisionally certified two nationwide settlement classes under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3);

WHEREAS, on May 28, 2013, Home Depot, U.S.A., Inc. opted out of the 23(b)(3) settlement class, and objected to the proposed settlement and the certification of the 23(b)(2) settlement class;

WHEREAS, on December 13, 2013, the Court approved the class settlement of the *Interchange Fee Litigation*, and certified two settlement classes, one under Federal Rule of Civil Procedure 23(b)(2) and one under Federal Rule of Civil Procedure 23(b)(3);

WHEREAS, on December 13, 2013, Home Depot U.S.A., Inc. filed an appeal from the Court's opinion granting approval to the class settlement of the *Interchange Fee Litigation*;

WHEREAS, on January 14, 2014, Visa U.S.A Inc., Visa Inc., and Visa International Service Association (collectively "Visa") filed a complaint for Declaratory Judgment (the "Complaint") against Home Depot U.S.A., Inc. and The Home Depot, Inc. (collectively "The Home Depot") in the case titled *Visa U.S.A. Inc., Visa Inc., and Visa International Service Association v. The Home Depot, Inc., and Home Depot U.S.A.*, 14-cv-0261 (E.D.N.Y.) (JG) (JO) (the "Declaratory Judgment Action");

WHEREAS, on March 31, 2014 Visa and The Home Depot (collectively "the Parties") entered into an agreement to treat the Declaratory Judgment Action as stayed in all respects ("Stay Agreement");

WHEREAS, pursuant to the Stay Agreement, Visa served the Complaint in the Declaratory Judgment Action upon The Home Depot on May 9, 2014;

WHEREAS, on May 27, 2014 the parties entered into a stipulation to stay the Declaratory Judgment Action in all respects until August 6, 2014 ("Stipulation");

WHEREAS, the Court So Ordered the Stipulation on May 28, 2014;

WHEREAS, on August 1, 2014 the parties entered into a stipulation to stay the Declaratory Judgment Action in all respects until November 4, 2014 ("Stipulation");

WHEREAS, the Court So Ordered the Stipulation on August 4, 2014;

WHEREAS, pursuant to the Stipulation the stay period expires on November 4, 2014;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, that:

1. The Declaratory Judgment Action is stayed in all respects until February 2, 2015, without prejudice to any party's right to lift the stay before that time.
2. The Home Depot has 60 days from the date the stay ends, either by expiration of the stay period or by decision of one of the parties to terminate the stay prior to its expiration, to answer or otherwise respond to the Complaint.
3. In the event that The Home Depot files against Visa claims based on opting out of the Rule 23(b)(3) settlement class that was certified by the Court in December 2013 in the *Interchange Fee Litigation*, The Home Depot will do so in federal court.

DATED: October 31, 2014

Respectfully submitted,

HOLWELL SHUSTER &
GOLDBERG LLP

By:



Richard J. Holwell
Michael S. Shuster
Demian A. Ordway
125 Broad Street, 39th Floor
New York, NY 10004
(646) 837-5151
rholwell@hsndl.com
mshuster@hsndl.com
dordway@hsndl.com

ARNOLD & PORTER LLP

Robert J. Vizas
Three Embarcadero Center, Tenth Floor
San Francisco, CA 94111-4024 (415)
471-3311
robert.vizas@aporter.com

Mark R. Merley
Matthew A. Eisenstein
555 12th Street, NW
Washington, DC 20004-1206
(202) 942-5321
(202) 942-6606
mark.merley@aporter.com
matthew.eisenstein@aporter.com

Robert C. Mason
399 Park Avenue
New York, NY 10022-4690
(212) 715-1000
robert.mason@aporter.com

*Attorneys for Plaintiffs Visa Inc., Visa U.S.A. Inc.,
and Visa International Service Association*

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By:



Stephen R. Neuwirth
Steig D. Olson
Alicia Cobb
51 Madison Avenue, 22nd Floor
New York, New York 10010-1601
(212) 849-7000
stephenneuwirth@quinnmanuel.com

*Attorneys for Defendants The Home Depot, Inc.,
and Home Depot U.S.A., Inc.*

SO ORDERED:

Dated:

New York, New York

United States District Judge